Claim 1 recites a method in which a plurality of computers, which have respective memory and I/O devices, intercommunicate over a network. Each computer runs a respective virtual machine implementer. The virtual machine implementers, however, share a virtual machine, using the I/O devices for intercommunication. In other words, claim 1 recites multiple computers with multiple memories and multiple virtual machine implementers, which together can support a shared virtual machine.

Bugnion, by contrast, describes a single shared memory multiprocessor with a single virtual machine monitor (VMM, referred to as "Disco"), which may support several virtual machines (Figure 1). In rejecting the claims in the present Official Action, the Examiner apparently understood that Bugnion shows only a single-machine/single VMM architecture, and therefore relied on a paragraph in the conclusion of the Bugnion article (Sec. 7) that refers to "more loosely coupled environments such as networks of workstations." The Examiner did not explain, however, how this paragraph should be interpreted or why he considered this paragraph specifically to anticipate the claims in the Application.

In order to clarify the meaning of the cited paragraph, Applicant submits herewith a Declaration under 37 C.F.R. § 1.132 by Dan Eylon. In view of the Examiner's comments on the previous declaration that was submitted in this case, Dr. Eylon has avoided all statements of opinion, and has confined himself to explaining the meaning of the paragraph in question. Applicant respectfully submits that the Examiner's allegations of "dual correspondence" have no basis in the Law or Rules, particularly since Dr. Eylon is neither the applicant nor the assignee.

As explained in the Declaration, Bugnion's reference to the use of Disco in the cited passage might refer to running the Disco VMM over an entire group of workstations (although it is

unlikely that this was Bugnion's intent). In this case the system would still consist of a single VMM, not multiple virtual machine implementers running on different machines as recited in claim 1.

On the other hand, Bugnion could be taken to mean that each workstation in the network runs its own, separate Disco VMM. In this case, however, a person of ordinary skill in the art would understand that each workstation also runs its own virtual machine. Bugnion does not teach or suggest in any way that the individual Disco VMMs on the different workstations could together share one virtual machine, as required by claim 1.

MPEP 2131 states:

> TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)... "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

As explained above and supported further in the attached Declaration, Bugnion does not teach all the elements of claim 1, not even inherently, and could not possibly have enabled a person of ordinary skill to make the claimed invention. Therefore, claim 1 is patentable over the cited art.

In view of the patentability of claim 1, dependent claims 2-9, 11, 13 and 40 are also patentable.

Claims 13-23, 25, 27-34, and 36-39, 41 and 42 recite computer software and a computer system that operate on principles similar to the methods of claims 1-9, 11, 13 and 40.

Claims 13-23, 25, 27-34, and 36-39, 41 and 42 are therefore patentable, as well, for the reasons explained above.

Furthermore, notwithstanding the patentability of independent claims 1, 14 and 28, the dependent claims in this application are believed to recite independently-patentable subject matter. In the interest of brevity, however, Applicant will refrain at present from arguing the patentability of the dependent claims.

Rejections Under 35 U.S.C. § 103

Dependent claims 10, 12, 24, 26, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bugnion in view of Bugnion (U.S. Patent 6,075,938) and further in view of Official Notice taken. Applicant respectfully traverses this rejection. Dependent claims 10, 12, 24, 26, and 35 are believed to be allowable at least because they depend from an allowable base claim.

Furthermore, Applicant specifically traverses the Examiner's citation of "official notice" in finding certain claim limitations to be obvious. According to MPEP 2144.03(A), "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." The Examiner has done no more in the present instance, however, than to repeat the added limitations of these dependent claims and then make a conclusory statement that the added limitations are obvious because of the desirable results they achieve. If the Examiner wishes to maintain the rejection of these claims, Applicant respectfully requests that the Examiner provide documentary evidence in support of his allegations or a suitable affidavit or declaration, as required by 37 CFR 1.104.

Concluding Matters

Applicant has studied the additional reference made of record by the Examiner (US 2002/0052914) and believes the claims in this application to be patentable over this reference, as well, whether it is taken individually or in combination with the other cited references.

It is believed that the amendments and remarks presented hereinabove are fully responsive to all the grounds of rejection raised by the Examiner, and that the Application is now in order for allowance.

Applicant again thanks the Examiner for his thorough consideration of the Application and appreciates the careful analysis of the art cited therein.

Respectfully submitted,

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